

REMARKS

In an office action dated December 11, 2008, the Examiner rejected claims 1-4, 7, 9, and 19 under 35 U.S.C. §103(a) as unpatentable over Harrington et al. (U.S. Patent 6,161,099) in view of Lucking-Reiley, "Auctions on the Internet: What's Being Auctioned, and How?" (J of Industrial Economics, Vol. XLVIII, No. 3, Sept, 2000, herein *Lucking-Reiley*) and Taylor et al. (U.S. Patent Publication 2002/0065763); and rejected claims 13-16 under 35 U.S.C. §103(a) as unpatentable over *Harrington, Lucking-Reiley and Taylor*, further in view of Danneels et al. (U.S. Patent 6,272,472).

While applicant believes the claims as previously presented sufficiently distinguish over the art of record, in an attempt to further prosecution herein, applicant has amended the independent claims to make further clarifications. As amended, the claims are patentable over the cited art.

Applicant's invention relates to on-line auctioning techniques, and in particular provides an automated method for screening and excluding selective bidders from an auction based on the duration of time the bidder has been participating in the bidding process with the server which manages the auction. As disclosed in applicant's background, on-line auctioning is known, but one of the drawbacks to conventional systems is that, perhaps due to the anonymity of the Internet, bidders often fail to honor their bids. Certain measures to discourage this have been taken, as noted in applicant's background section. It is possible to require insurance or third party escrows. It is further known for the seller to manually block selective bidders from participating. However, manual intervention by the seller requires considerable time and effort, and is not well suited to may auction environments in which the number of participants is large.

In accordance with the preferred embodiment of applicant's invention, an automatic process for screening participants is provided whereby the seller specifies a cut-off date for participation in the bidding process with the server. Preferably, bidders must register with the server, and are allowed

to bid only if they have been registered since before the cut-off date. Each seller can individually choose his own cut-off date (or no cut-off date), and thus selectively control the exclusivity of the auction. An older cut-off date means more exclusivity, and fewer bidders will be allowed in the auction process, those bidders being clients who have been registered a sufficiently long time and therefore are deemed more reliable.

Applicant's invention does not provide a perfect method for screening bidders, but does give the seller some degree of selective control over the exclusivity of the auction and does so in a manner which can be automatically enforced by the system, without the need for the seller to decide on a case-by-case basis whether to allow an individual bidder to participate. It is therefore suitable to certain mass, anonymous auction environments for which manual screening by the seller is not.

Therefore, significant features of applicant's invention recited in all independent claims, include the use of a *seller-specified "membership duration parameter value specifying a cut-off time" for participation*, and the *automatic preclusion of bidding by bidders whose actual membership duration does not antedate the cut-off time*.

Applicant's representative claim 1, as amended, recites:

1. A computer-implemented method for controlling an auction event between a plurality of computer systems on a multi-user and interactive network, the method comprising the steps of:

setting at least one membership duration parameter value for use in precluding a submitted bid of one or more bidders responsive to a seller identifying the at least one membership duration parameter value when registering for an auction at one computer system, *said at least one membership duration parameter value specifying a cut-off time for use in automatically precluding bids from selective bidders*; and,

automatically precluding the submitted bid of the one or more bidders at other computer systems on the network during the auction event if the one or more bidders' respective actual membership duration does not antedate the cut-off time specified by the at least one membership duration parameter value. [emphasis added]

The remaining independent claims, though varying in scope, recite limitations analogous to those italicized above.

Harrington discloses an on-line system for conducting municipal bond auctions. An issuer or underwriter offers bonds for auction and establishes the bidding parameters of the auction. Bidders can submit bids over the Internet through an interactive interface with the auctioneer's web site. The server (auctioneer) can verify that the parameters of each bid conform to some predetermined specified parameters. *Harrington* does not state specifically what parameters are verified, and they would presumably relate to issues such as quantity, price, interest rate and so forth, upon which the issuer or underwriter may establish limits. *Harrington* specifically does not disclose or suggest the use of a cut-off date of membership (registration) with the auctioneer as a screening criterion for precluding participation of certain bidders.

Lucking-Reiley is an economic analysis of the on-line auctions industry. *Lucking-Reiley* discloses explicitly that in some on-line auctions, the seller establishes a minimum bid price. I.e., Lucking Reiley makes explicit what was somewhat unclear in *Harrington*. However, like *Harrington*, *Lucking-Reiley* does not disclose or suggest the use of a cut-off date of membership (registration) with the auctioneer as a screening criterion for precluding participation of certain bidders.

Taylor discloses an Internet based shopping facility in which shoppers (bidders) may bid on any of various items within a collection offered for sale. In order to bid on items in a collection, the bidder is individually pre-approved by the seller. The bidder therefore is to contact the seller and request pre-approval (for which the seller may presumably request any desired information directly from the bidder). In order to make the approval determination, the auction facility provides the seller with access to a certain information about the bidder, disclosed as follows:

The auction facility 10 provides the seller with information regarding the potential bidder such that the seller can make an informed determination regarding whether to pre-approve the bidder. The information may include the bidder's bidding history and feedback profile....

... Each bidding history table 604 is populated with a particular bidder's bidding history records. Each bidding history record may include, *inter alia*, the title of a listing that was/is being auctioned via the auction facility 10, the bidder's bidding amount, and bid retraction information. The bid retraction information indicates whether the bidder retracted his/her bid on a particular item....

...The summary table 606 stores a summary of feedback information regarding the bidders. Sellers and bidders that have experienced a particular bidder's behavior during the past auctions provide the feedback information (or comments) regarding to [sic] the bidder..." [p. 3, paragraphs 0038, 0040, 0041].

Although *Taylor* plainly does not disclose using a cut-off date of membership for determining whether to grant bidding privileges, the Examiner reasons that such a criterion would have been obvious in view of *Taylor*'s disclosure of "bidding history", and that the combination of *Taylor*, *Harrington* and *Lucking-Reiley* therefore renders applicant's claimed invention obvious. Applicant respectfully disagrees.

It is not merely a criterion which is recited in applicant's claims, but an ***automated technique for allowing selective bidders to bid on an item***. This automated technique is intended for use in environments where manual approval is impractical, e.g., where a large number of relatively anonymous bidders are bidding for articles over the Internet. In order to provide a workable automated technique in such an environment, there must be a selection criterion which can be applied automatically by a computer system to a large pool of potential bidders based on information readily available, and which will produce meaningful results. Applicant discloses and claims **both** such an automated technique and selection criterion. ***Taylor discloses neither.***

Taylor's technique is manual, and plainly intended for use in an environment in which the number of potential bidders is relatively small. The examples disclosed in *Taylor* indicate bidding on collectibles. In such an environment, relatively small groups of individuals often collect respective

obscure items, so that over time the individuals get to know one another. In this environment, individuals within the group can police one another. It is instructive that the major feedback mechanisms offered by *Taylor* are bidding history and individual comments from others in the group. Thus, if an individual has a history of bid retraction or other abusive behavior, this will become generally known through the group via the bidding history and comments by others, and appropriate protective action might be taken by the seller.

Such a technique is simply not applicable to the type of mass participation, anonymous environment to which applicant's technique is meant to apply. In such an environment, it would be completely impractical to approve bidders one-by-one based on past bidding history and comments. Due to the number of participants, there are unlikely to be meaningful comments for most of the potential participants and bidding history may be very sparse. Furthermore, the cost of making individual determinations for a large number of potential bidders is likely to be prohibitive, and could well exceed the expected return for the auction.

It is true that the term "bidding history" in its broadest sense might include the length of time a bidder has been registered with the auctioning entity, but the Examiner is lifting a term not from applicant's claims but from the *Taylor* reference. Applicant's claims do not use the term "bidding history", but use something much more specific. The claims, as amended, recite a "***membership duration parameter value specifying a cut-off time***". *Taylor*'s use of the term "bidding history" refers to specific actions of the bidder which might be known to others in a group, and which might be the basis of an individual, case-by-case determination whether to allow the bidder to participate. Such a technique does not teach, suggest, or otherwise render obvious the use of the automated criterion claimed by applicant.

Far from suggesting applicant's technique, *Taylor* teaches away from an automated technique. *Taylor* plainly discloses a manual, case-by-case determination of whether the potential bidder should

be allowed to bid on an item, in which the “bidding history” information maintained by the auctioning entity is only one possible source of information for the seller to have in making that determination. This is a far cry from the automated determination claimed by applicant.

Both *Harrington* and *Lucking-Reiley* appear to disclose automated determinations, but these are determinations made with respect to the parameters of a bid, not the suitability of a bidder. Such determinations are made for a completely different reasons, i.e., the seller wants to assure that a minimum selling price will be met. For purposes of such determinations, the reliability of the bidder is irrelevant. It matters not how reliable the bidder is, if his bid is below the price the seller is willing to accept. Neither *Harrington* nor *Lucking-Reiley* disclose anything about automated screening of *bidders*, as opposed to automated screening of *bids*.

For all of the reasons stated, the independent claims are not obvious over the combination of *Harrington*, *Lucking-Reiley* and *Taylor*.

The tertiary reference, *Danneels*, is cited to show computer programs on computer readable media, as recited in claims 13-16, but does not disclose or suggest the features discussed above, for which the Examiner relies upon *Harrington*, *Lucking-Reiley* and *Taylor* in the rejections..

In view of the foregoing, applicant submits that the claims are now in condition for allowance and respectfully requests reconsideration and allowance of all claims. In addition, the Examiner is

encouraged to contact applicant's attorney by telephone if there are outstanding issues left to be resolved to place this case in condition for allowance.

Respectfully submitted,

JOHN M. SANTOSUOSO



By: _____

Roy W. Truelson

Registration No. 34,265

Telephone (507) 289-6256 (Office/Fax)
(507) 202-8725 (Cell)

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